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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0110

This Decision concerns the eligibility of XXX (hereinafter referred to as "the Individual") to retain a level "Q" access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ A Local Security Office (LSO) of the Department of Energy (DOE) suspended the Individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, it is my opinion that the Individual's access authorization should be restored.

I. BACKGROUND

The present proceeding involves an Individual who had originally been granted an access authorization in July 2002. When the Individual initially applied for his DOE access authorization, he informed DOE security officials of his prior experience with illegal drugs. Transcript of Hearing (Tr.) at 40. The Individual eventually signed a DOE Drug Certification providing written assurance that he would refrain from using or becoming involved in any way with illegal drugs while holding a DOE access authorization and was then granted an access authorization. In August 2002, the Individual was arrested for driving while intoxicated (DWI). Because of this arrest, the Individual was interviewed by security officials and evaluated by a DOE consultant psychiatrist (the DOE Psychiatrist) on December 11, 2002. As a result of the DOE Psychiatrist's examination of the Individual and review of the Individual's security file, the DOE Psychiatrist concluded that the Individual meets the criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM IV-TR) for Alcohol Abuse. During

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

the DOE Psychiatrist's examination of the Individual, he admitted that he had recently used marijuana and cocaine. This information, along with the information contained in the Individual's security file, convinced the DOE Psychiatrist that the Individual meets the criteria set forth in the DSM IV-TR for Substance Abuse, Marijuana. In addition, the Individual's admission to the DOE Psychiatrist that he had used marijuana and cocaine a few days prior to the DOE Psychiatrist's examination indicates that he violated the DOE Drug Certification he had signed in July 2002.

Accordingly, the Individual's access authorization was suspended and an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The DOE then issued a letter notifying the Individual that information the DOE possessed created a substantial doubt concerning his continued eligibility for access authorization (the Notification Letter). The Notification Letter specifies four areas of derogatory information described in 10 C.F.R. § 710.8. Section 710.8 (h) pertains to information indicating that the Individual has: "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." Section 710.8(j) pertains to information indicating that the Individual has: "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." Section 710.8(k) pertains to information which indicates that the Individual: "trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." Section 710.8(l) pertains to information indicating that the Individual: "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility."

After receiving the Notification Letter, the Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. At the hearing, the DOE presented one witness, the DOE Psychiatrist. The Individual called six witnesses and testified on his own behalf. The record of this proceeding was closed on November 29, 2004, when OHA received a copy of the transcript of the hearing. *See* Transcript of Hearing, Case No. TSO-0110.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render an opinion based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that the access authorization decision "is a comprehensive, common-sense

judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this Decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. § 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). In the present case, the Individual has convinced me that restoring his security clearance would not endanger the common defense and would be clearly in the national interest.

III. FINDINGS OF LAW AND FACT

A. Criteria J, K and H

i) Alcohol

The record indicates that the Individual has been arrested on three occasions for alcohol-related offenses, including two DWIs, the most recent of which occurred on August 30, 2002. The Individual admitted to the DOE Psychiatrist that he had driven while intoxicated on 20 to 30 occasions between the two DWI arrests. This information led the DOE Psychiatrist to conclude that the Individual suffers from Alcohol Abuse and has habitually used alcohol to excess. The Individual does not contest these conclusions. Accordingly, the LSO has appropriately invoked Criteria J and H.

ii) Illegal Drug Use

The record indicates that the Individual candidly admitted a history of illegal drug abuse prior to his receipt of his DOE access authorization. During his psychiatric examination, the Individual further admitted that he had recently used marijuana and cocaine. This information is significant for three reasons. First, it clearly establishes that the Individual used illegal drugs, therefore providing a proper basis for the LSO's invocation of Criterion K. Second, it formed part of the basis for the DOE Psychiatrist's conclusion that the Individual meets the criteria for Substance Abuse, Marijuana,

therefore providing a proper basis for the LSO to invoke Criterion H. Third, it indicates that the Individual violated the DOE Drug Certification he signed in July 2002. The Individual does not contest these conclusions. Accordingly, the LSO has appropriately invoked Criterion K.

iii) Evidence of Mitigation

In his Report, the DOE Psychiatrist opined that in order to establish *rehabilitation* from his excessive use and abuse of alcohol and illegal drugs the Individual would need to either

(1) Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of one year and be completely abstinent from alcohol and all non-prescribed substances for a minimum of 1 year following the completion of this program = 2 years of sobriety.
[or]

(2) Satisfactorily complete a minimum of 50 hours of a professionally led, substance abuse treatment program, for a minimum of 6 months, including what is called ‘aftercare’ and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of 1 [and] 1/2 years following the completion of this program = 2 years of sobriety.

DOE Psychiatrist’s Report at 29 (Footnote omitted). In his Report, the DOE Psychiatrist opined that in order to establish *reformation* from his excessive use and abuse of alcohol and illegal drugs the Individual would need to either

(1) [Go] through one of the two rehabilitation programs listed above, then [maintain] 2 years of absolute sobriety. . . . [or]

(2) If the [Individual] does not go through one of the two rehabilitation programs listed above, then [the Individual must maintain] 5 years of absolute sobriety

Id. at 30. At the Hearing, the DOE Psychiatrist essentially reiterated his diagnosis and treatment recommendations as well as his opinion concerning the actions the Individual needed to take in order to establish reformation or rehabilitation. In addition, the DOE Psychiatrist noted the Individual’s emotional state during the examination. The DOE Psychiatrist testified that: “I’ve done over a thousand of these evaluations, and I would say that was the most I’ve seen somebody break down and get emotional and cry when I’m evaluating them.” Tr. at 13.

At the Hearing, the Individual admitted that he suffered from alcohol abuse and had used illegal drugs. Tr. at 53. However, the Individual submitted substantial evidence and testimony showing that he had been rehabilitated from his alcohol and substance abuse. Specifically, the Individual’s rehabilitation had begun when he attended eight sessions of an alcohol/substance abuse education program (the education program). Tr. at 48. The Individual then attended six aftercare counseling sessions with a counselor affiliated with the education program (the education program counselor).

Tr. at 39, 46. Subsequent to his completion of the education program, the Individual discontinued his use of alcohol and illegal drugs.²

The Education Program Counselor testified at the hearing. The Education Program Counselor testified that, during his six sessions with the Individual, the Individual had made progress towards recognizing the issues in his life and becoming more engaged in the therapeutic process. Tr. at 56-57. The Education Program Counselor testified that he thought the Individual had been honest and forthright with him. Tr. at 59. The Education Program Counselor testified that the Individual had: “[G]otten to a place where he accepted that alcohol had been a problem for him and he’d made some decisions about - - about making his use not being part of his life any longer.” Tr. at 61.

The Individual also began participation in an Employee Assistance Program (EAP). The EAP included at least 22 one-on-one counseling sessions and required the Individual to sign a recovery contract. Tr. at 70. Under the recovery contract, the Individual underwent monthly random drug and alcohol screening for a period of one year and quarterly random drug and alcohol screening thereafter.³ Tr. at 37, 42-45, 70. These tests have been uniformly negative. Tr. at 45, 71, 72. The Individual will remain subject to these random drug and alcohol tests on a quarterly basis.

As noted above, the Individual attended 22 one-on-one counseling sessions with a counselor affiliated with the EAP (the EAP Counselor). The EAP Counselor testified at the Hearing. She testified that she thought she knew the Individual pretty well. Tr. at 79. She further testified that she thought that the Individual was “very open and forthright.” Tr. at 81. The EAP Counselor testified that the Individual’s prognosis for continued sobriety is excellent to good. Tr. at 75. The EAP Counselor indicated that her assessment of the Individual’s prognosis was based upon the Individual’s workplace functioning, his family and social functioning and the fact that he had maintained sobriety for an extensive period of time. Tr. at 76.⁴ She noted that she had witnessed a change in the Individual: He has become a lot more serious about his work and life endeavors. Tr. at 79. The EAP Counselor notes that he now has a full understanding of the seriousness of his substance abuse and has become a more mature, responsible person. Tr. at 79, 80. The EAP counselor noted that the Individual has been “very responsible in terms of the treatment and being - - and complying with all the terms of a recovery agreement and all the treatment that he’s - - that he’s had.” Tr. at 80. The EAP Counselor notes the Individual has been able to manage stressors in his life without resorting to alcohol or drugs. Tr. at 82. The EAP Counselor testified that the Individual does not have a high risk of relapse. Tr. at 82.

² At the time of the Individual’s discharge from this program, his prognosis was described as “good/improved” by the education program counselor. Tr. at 48.

³ The random drug screening consists of a breathalyzer test and a urinalysis.

⁴ The Individual’s co-workers and supervisors uniformly and enthusiastically testified that he is a highly conscientious, responsible and valued employee. Tr. at 30, 87-89, 92-98.

The Individual recognizes that he has a problem with alcohol and drugs. Tr. at 53. However, the Individual testified that he had not consumed illegal drugs or alcohol since December 24, 2002. Tr. at 37. The Individual testified that he had matured and come to the realization that alcohol and drugs were a problem in his life and that he plans to remain free of both in the future. (The Individual was only 26 years of age at the time of the Hearing). Tr. at 39, 42. The Individual further testified that he plans to continue with his counseling. Tr. at 46. The Individual testified that he was motivated to stay sober by his strong desire to be a good father to his son. Tr. at 53.

At the end of the hearing, the DOE Counsel recalled the DOE Psychiatrist, who had viewed all of the testimony, to the stand. On his return to the stand, the DOE Psychiatrist testified that the Individual had provided adequate evidence of rehabilitation and reformation. Tr. at 111. I too was convinced that the Individual has successfully mitigated the concerns raised under Criteria J, K and H by his alcohol and substance abuse, based on the evidence presented at the Hearing as described above.

B. Criterion L

The Individual's admitted use of marijuana and cocaine violated federal and state law and violated the provisions of a DOE Drug Certification that the Individual had signed. Accordingly, the Local Security Office appropriately invoked Criterion L.

In his original application for a DOE access authorization, the Individual candidly admitted a history of illegal drug use. Tr. at 40. Illegal drug use raises serious security concerns because it may reflect an inability to safeguard classified information and special nuclear material. Involvement with illegal drugs exhibits an unacceptable and disturbing disregard for laws prohibiting their use. Such disregard for the law raises concerns that the Individual may similarly disregard other laws, including those which protect classified information and special nuclear materials. *See Personnel Security Hearing, Case No. VSO-0116*, 26 DOE ¶ 82,765 at 85,602 (1997) (citing *Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,512 (1995)). It is important to note that avoiding illegal drug use is itself a requirement of both the DOE's safety and security regulations. Moreover, the use of illegal drugs (and the disrespect for law and authority that such use suggests) exhibits a lapse in judgment and maturity. Finally, I note that involvement with illegal drugs may render the user susceptible to blackmail or coercion.

Because his original application for a DOE access authorization disclosed a history of illegal drug use, the Individual was asked by the LSO to sign a DOE Drug Certification. On July 1, 2002, the Individual signed a DOE Drug Certification in which he promised to refrain from using or being involved with illegal drugs while holding a DOE Drug Certification. In the present case, the DOE's security concerns under Criterion L are largely based upon the Individual's use of illegal drugs in December 2002 despite this promise. The Individual's failure to honor his Drug Certification, and his violation of DOE's and his employer's drug policies, raise important security concerns. The DOE security program is based on trust. If an employee breaks a written promise to the DOE, that trust is violated. It was precisely because of the Individual's prior illegal drug use that he was asked in

2002 to sign a Drug Certification, promising that he would never again use illegal drugs while employed in a position requiring an access authorization. He clearly violated this promise when he used marijuana and cocaine subsequent to July 1, 2002. He therefore risked his career and access authorization, violated DOE safety and security regulations, and put himself, his fellow employees and the national security at risk.

Violation of the DOE Drug Certification presents especially serious security concerns. *Personnel Security Hearing, Case No. VSO-0208*, 27 DOE ¶ 82, 774 at 85,655 (1998). Not only does it bring into question the Individual's judgment and trustworthiness, but it raises concerns about the possibility of future drug use. However, in the present case, I find that the Individual has presented sufficient evidence to resolve the serious concerns about his judgment, honesty and potential for future drug use.

My impression of the Individual, formed at the hearing, is that he is an extremely competent, enthusiastic and dedicated worker. It is clear that he recognizes the seriousness and the significance of his actions and is sincerely committed to avoiding future drug use and honoring his promises. Moreover, the Individual obviously regrets, and fully appreciates the significance of, his violation of the DOE Drug Certification. I am convinced that the Individual has become a particularly honest and responsible person and that his violation of a DOE Drug Certification is highly unlikely to recur.

Most importantly, I am convinced that the Individual has gone through a life transforming experience in which he has made the transition from being an irresponsible and immature youth to a mature, responsible young man whose friends, family and coworkers respect and rely upon. At the time that he was first examined by the DOE Psychiatrist, he had hit rock bottom. As the DOE Psychiatrist explained in his testimony:

Well for one, I think there was a lot of things going on in his life. The woman in his life and his child had just left him. I had just told him that I was going to send him to the laboratory for drug testing, and I think he realized that it was going to turn out positive. He was telling me he was going to lose his wife, now he's going to lose his job, he's going to lose his child.

Tr. at 13. From this point on, the Individual went on to put his life back together. The witnesses at the Hearing testified that the Individual had undergone significant change and had exhibited a great deal of personal growth. In addition to reforming and rehabilitating himself from substance abuse, the witnesses testified that the Individual had developed markedly improved levels of maturity, judgment and responsibility. Tr. at 31-32, 39, 42, 79-80, and 87.

In addition, I find that the Individual's use of illegal drugs in violation of the DOE Drug Certification was directly related to his substance abuse disorder. There is no allegation of untrustworthiness on any other account. Accordingly, the successful treatment of his substance abuse disorder provides further mitigation of the Criterion L security concerns at issue in the present case. *Personnel Security Hearing, Case No. TSO-0001* (April 23, 2003) (mitigation of underlying substance abuse

disorder provides mitigation of Criterion L security concerns raised by conduct related to or caused by substance abuse disorder).

As I have stated above, a violation of a DOE Drug Certification raises particularly serious security concerns that are difficult to mitigate. However, in the present case, I am convinced that they are mitigated by the Individual's maturation into a person who exhibits considerable judgment and reliability. Although the security concerns raised by a violation of a DOE Drug Certification are particularly serious in nature, I find that they have been satisfactorily resolved by the evidence in the record of this proceeding.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has presented evidence that warrants restoration of his access authorization. Since the Individual has resolved the DOE's allegations under Criterion H, J, K and L, I conclude that the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's access authorization should be restored.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 5, 2005